

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EDWAN THURMOND,

Petitioner,

vs.

GREG SMITH, *et al.*,

Respondents.

3:09-cv-00401-RCJ-WGC

ORDER

This habeas matter under 28 U.S.C. § 2254 comes before the Court on petitioner's motion (#63) for decision and motion (#64) to strike pleadings.

In the motion for decision, petitioner states that the matter is ready for disposition. In contrast, in the motion to strike, he states that he was not served with the answer (#57) and an accompanying motion (#56) – despite his subsequently having filed a traverse (#61).

Petitioner has not established a basis for relief due to alleged non-service. The answer and motion were filed on May 15, 2012, and the purported mail log tendered – which is not authenticated by a competent witness – reflects that petitioner received incoming legal mail from the Attorney General on May 25, 2012. #64, at electronic docketing page 27. That is consistent with possible mail and other delays. Moreover, petitioner asserts only that “at the very least (doc. 56) was not served.” #64, at 1. That item is a motion only for leave to file excess pages. Even if petitioner's narrow actual factual assertion that #56 was not served were true, the Court would not strike the answer because such a motion was not served. Rather, the only remedy for alleged non-service of the answer itself would be to direct service

1 and allow another opportunity to file a reply. The Court would not strike the answer; and there
2 is no default judgment in a habeas proceeding. However, petitioner does not seek further
3 time to reply but instead seeks entry of a decision.

4 Turning to the motion for decision, the Court will seek to resolve this matter within the
5 next 120 days. In the meantime, petitioner's arguments that the state court did not have
6 jurisdiction to convict him and that the conviction is void on its face remain unpersuasive as
7 a basis for immediate entry of judgment in petitioner's favor.

8 IT THEREFORE IS ORDERED that petitioner's motion (#63) for decision is GRANTED
9 IN PART to the extent that the Court will seek to resolve this matter within the next 120 days.

10 IT FURTHER IS ORDERED that petitioner's (#64) to strike pleadings is DENIED.

11 DATED: March 31, 2014.

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15 ROBERT C. JONES
16 United States District Judge
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